

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID WILNER, an individual,

Plaintiff,

v.

OKTA, INC., a Delaware corporation;
TODD MCKINNON, an individual,

Defendants.

No. 2:22-cv-00169-BJR

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, Plaintiff David Wilner (“Wilner”) and Defendants Okta, Inc. (“Okta”) and Todd McKinnon hereby stipulate to and petition the court to enter the following Stipulated Protective Order (“Order”). The parties acknowledge that the terms in this agreement and Order are consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential Material” shall include the following documents and tangible things
3 produced or otherwise exchanged:

4 (a) personal or other personnel information regarding current or former
5 employees of Okta or Auth0, Inc. (“Auth0”), including Wilner (including but not limited to contact
6 information, evaluations, compensation and financial information, investigations, discipline, and
7 other information in personnel files and other employee records); financial and business
8 information about Okta and/or Auth0 that is not generally available to the public, the unauthorized
9 disclosure and/or use of which the designating party believes would cause material and/or
10 identifiable harm to any party and/or any third party;

11 (b) information pertaining to a third party that the designating party reasonably
12 believes (i) is personal, (ii) is not be generally available to the public, and (iii) must be designated
13 as Confidential Material in order to protect and preserve the interests of such third party;

14 (c) information that either party is obligated by contract or state or federal law
15 to protect as confidential;

16 (d) the Parties’ non-public financial or tax information;

17 (e) contracts that contain confidentiality clauses covering the information to be
18 produced;

19 (f) legally protectable proprietary business information or trade secrets; and

20 (g) other information that a party in good faith believes (i) to be confidential,
21 proprietary, and/or sensitive, and (ii) the unauthorized disclosure or use would cause material and
22 identifiable harm to the party or a third party.

23 3. SCOPE

24 The protections conferred by this agreement cover not only Confidential Material (as
25 defined above), but also (1) any information copied or extracted from Confidential Material; (2)
26 all copies, excerpts, summaries, or compilations of Confidential Material; and (3) any testimony,

1 conversations, or presentations by parties or their counsel that might reveal Confidential Material.

2 However, the protections conferred by this agreement do not cover information that is in
3 the public domain or becomes part of the public domain through trial or otherwise.

4 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

5 4.1 Basic Principles. A receiving party may use Confidential Material that is disclosed
6 or produced by another party or by a non-party in connection with this case only for prosecuting,
7 defending, or attempting to settle this litigation. Confidential Material may be disclosed only to
8 the categories of persons and under the conditions described in this agreement and Order.
9 Confidential Material must be stored and maintained by a receiving party at a location and in a
10 secure manner that ensures that access is limited to the persons authorized under this agreement
11 and Order.

12 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
13 by the court or permitted in writing by the designating party, a receiving party may disclose any
14 Confidential Material only to:

15 (a) the receiving party’s counsel of record in this action, as well as employees
16 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the
18 receiving party to whom disclosure is reasonably necessary for this litigation;

19 (c) experts and consultants to whom disclosure is reasonably necessary for this
20 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the duplication of
23 Confidential Material, provided that counsel for the party retaining the copy or imaging service
24 instructs the service not to disclose any Confidential Material to third parties and to immediately
25 return all originals and copies of any Confidential Material;

26 (f) during and in preparation for their depositions, witnesses in the action to

whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Confidential Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement and Order;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. When practicable, before filing Confidential Material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Western District of Washington Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific Confidential Information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Western District of Washington Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Western District of Washington Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court’s files.

If the parties are unable to confer prior to filing confidential materials, the filing party shall file items marked confidential under seal with an accompanying motion to seal stating that the materials are being filed under seal due to the designations of the designating party. The designating party shall, in opposition, provide sufficient information such that the designating party meets the necessary burdens to seal confidential material.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
 3 or non-party that designates information or items for protection under this agreement must take
 4 care to limit any such designation to specific material that qualifies under the appropriate
 5 standards. The designating party must designate for protection only those parts of material,
 6 documents, items, or oral or written communications that qualify, so that other portions of the
 7 material, documents, items, or communications for which protection is not warranted are not swept
 8 unjustifiably within the ambit of this agreement and Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
 12 and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated for
 14 protection do not qualify for protection, the designating party must promptly notify all other parties
 15 that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided herein, or as
 17 otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under
 18 this Order must be clearly so designated before or when the material is disclosed or produced.

19 (a) Information in documentary form: (e.g., paper or electronic documents and
 20 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
 21 the designating party must affix the word "CONFIDENTIAL" to each page that contains
 22 Confidential Material. If only a portion or portions of the material on a page qualifies for
 23 protection, the producing party also must clearly identify the protected portion(s) (e.g., by making
 24 appropriate markings in the margins).

25 (b) Testimony given in deposition or in other pretrial proceedings: the parties
 26 and any participating non-parties must identify on the record, during the deposition or other pretrial

proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. During those fifteen days, the entire deposition transcript, including exhibits, will be treated as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement and Order for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement and Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other

1 affected parties in an effort to resolve the dispute without court action. The certification must list
 2 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
 3 to-face meeting or a telephone conference.

4 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 5 intervention, the designating party may file and serve a motion to retain confidentiality under Local
 6 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 7 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 8 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
 9 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
 10 the material in question as confidential until the court rules on the challenge.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 12 LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation that compels
 14 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
 15 must:

16 (a) promptly notify the designating party in writing and include a copy of the
 17 subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
 19 issue in the other litigation that some or all of the material covered by the subpoena or order is
 20 subject to this agreement and Order. Such notification shall include a copy of this agreement and
 21 Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 23 the designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential
 26 Material to any person or in any circumstance not authorized under this agreement and Order, the

1 receiving party must immediately (a) notify in writing the designating party of the unauthorized
 2 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c)
 3 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 4 agreement and Order, and (d) request that such person or persons execute the “Acknowledgment
 5 and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 7 MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently
 9 produced material is subject to a claim of privilege or other protection, the obligations of the
 10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
 11 is not intended to modify whatever procedure may be established in an e-discovery order or
 12 agreement that provides for production without prior privilege review. The parties agree to the
 13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals, each receiving
 16 party must return all Confidential Material to the producing party, including all copies, extracts
 17 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
 18 destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
 20 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
 21 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
 22 product, even if such materials contain confidential material.

23 The confidentiality obligations imposed by this agreement and Order shall remain in effect
 24 until a designating party agrees otherwise in writing or a court orders otherwise.
 25
 26

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED May 6, 2022.

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5 K&L GATES LLP

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PLLC,

6
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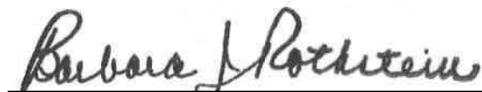
13 *Attorneys for Defendants*

Attorneys for Plaintiff David Wilner

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15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
17 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
18 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
19 documents, including the attorney-client privilege, attorney work-product protection, or any other
20 privilege or protection recognized by law.

21
22 DATED this 11th day of May, 2022.

23 

24 BARBARA J. ROTHSTEIN
25 UNITED STATES DISTRICT JUDGE
26

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on
 _____ [date] in the case of Wilner v. Okta, Inc., No. 2:22-cv-00169-BJR . I agree to comply
 with and to be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
 of contempt. I solemnly promise that I will not disclose in any manner any information or item
 that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
 with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____